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SESSION NO. 95

Tuesday, June 7, 2005

THIRTEENTH CONGRESS
FIRST REGULAR SESSION

SESSION N0. 95
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CALL TO ORDER

At 3:52 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

PRAYER

Sen. Rodolfo G. Biazon led the prayer, to wit:

> Most gracious and loving heavenly Father, we thank You for Your faithfulness in sustaining us in our efforts to pursue our mandate as senators of the Republic;
>
> We thank You for Your constant guidance and enlightenment in ensuring that we are focused on our task.
>
> Grant us the wisdom that only comes from the Holy Spirit to be particularly meticulous in crafting measures that will lead to national security and prosperity.
>
> Endow us with courage that we may be steadfast in our convictions and never compromise with vice and injustice.
>
> And above all, dear Father, provide us with the physical and psychological strength to cope with the rigors inherent in our efforts to fulfill our task.
>
> In all of these, we give You all the glory, honor and majesty now and forevermore.
>
> Amen.

ROLL CALL

Upon direction of the Chair, the Secretary of the Senate, Oscar G. Yabes, called the roll, to which the following senators responded:

Arroyo, J. P.	Lacson, P. M.
Biazon, R. G.	Lapid, M. L. M.
Defensor Santiago, M.	Madrigal, M. A.
Drilon, F. M.	Magsaysay Jr., R. B.
Ejercito Estrada, J.	Osmeña III, S. R.
Ejercito Estrada, L. L. P.	Pangilinan, F. N.
Enrile, J. P.	Pimentel Jr., A. Q.
Flavier, J. M.	Roxas, M.

With 16 senators present, the Chair declared the presence of a quorum.

Senators Cayetano, Gordon, Lim, Recto, Revilla and Villar arrived after the roll call.

Senator Angara was absent.

APPROVAL OF THE JOURNAL

Upon motion of Senator Pangilinan, there being no objection, the Body dispensed with the reading of the Journal of Session No. 94 and considered it approved.

REFERENCE OF BUSINESS

The Secretary of the Senate read the following matters and the Chair made the corresponding referrals:

BILLS ON FIRST READING

Senate Bill No. 2037, entitled

AN ACT INSTITUTING REFORMS IN LAND ADMINISTRATION

Introduced by Senator Drilon

To the Committees on Justice and Human Rights; Civil Service and Government Reorganization; and Finance

Senate Bill No. 2038, entitled

AN ACT AMENDING SECTION 110 (B) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES

Introduced by Senators Serge Osmeña and M. A. Madrigal

To the Committee on Ways and Means

COMMUNICATIONS

Letter from Director Lamberto R. Barbin of the Office of the President of the Philippines, dated May 25, 2005, transmitting to the Senate for its information and guidance, Memorandum Order No. 173, dated May 24, 2005, entitled: DIRECTING THE SECRETARY OF TOURISM TO LEAD THE ORGANIZATION AND IMPLEMENTATION OF ACTIVITIES AND PROGRAMS IN CELEBRATION OF THE 107TH ANNIVERSARY OF PHILIPPINE INDEPENDENCE.

To the Committees on Tourism; Education, Arts and Culture; and Finance

Letter from Amando M. Tetangco Jr., Officer-in-Charge of the *Bangko Sentral ng Pilipinas,* dated May 27, 2005, submitting to the Senate the 2004 Report on the Implementation of R.A. No. 7721 pursuant to Section 13 of R.A. No. 7721 (An Act Liberalizing the Entry and Scope of Operations of Foreign Banks in the Philippines and For Other Purposes).

To the Committee on Banks, Financial Institutions and Currencies

PRIVILEGE SPEECH OF SENATOR OSMEÑA

Availing himself of the privilege hour, Senator Osmeña delivered the following speech:

WHILE THE SENATE WAS ASLEEP

Ever since the beginnings of modern organized government in Greece and Rome, in England and France, in the United States, the legislature has always been the body tasked to reflect the will of the populace and the institution which protected the people from its rulers.

In bicameral systems, the Senate, sometimes referred to as the Upper House, has been given the responsibility to provide the checks on abuses committed by the Executive and even the Judicial branches of government. The authority to conduct inquiries and investigations is well-acknowledged.

The Roman Senate questioned various Ceasars; the English Parliament tried King John; the U.S. Senate investigated corrupt labor unions, the mafia, Nixon's Watergate, and Clinton's allegedly naughty activities.

Today, with the modest aspiration of convincing the honorable members of this Chamber to salvage the hopes and dreams of over two million investors in pre-need education, pension, memorial and other similar plans, I ask this Body's permission to focus on some examples of alleged abuses by two pre-need companies: the College Assurance Plans Group and the Pacific Plans, Incorporated.

First, let me give this Body a back-grounder on the pre-need industry.

Around the middle '60s, a handful of companies were organized to sell memorial or burial plans. The concept was modeled on the long-accepted endowment and annuity insurance policies which guaranteed a lump-sum payment, or a series of payments at some future date, after the receipt by the company of a smaller amount of money called the "premium" in the early years. This new product filled the need of families to anticipate the sudden need for large sums of money to cover the cost of purchasing a cemetery plot, the coffin, the embalming process, and the funeral wake of a member of a family. Because cemetery plots are real estate and values of land and funeral costs tend to rise over time, the intrinsic value of the memorial plan also increased as years went by and those plans were bought and sold in the secondary market. In other words, if a plan holder needed some cash, he could sell his plan and even make a profit on it.

About 1980, the organizers of the CAP or College Assurance Plan of the Philippines sought to apply this model to respond to an even more immediate need of Filipino families–to fulfill their dreams that their children would be able to obtain the finest education their parents could afford. And so the pre-need education plan was born.

In the first dozen years, this business model succeeded. The early products known as traditional or open-ended plans guaranteed full tuition payment in future years, also

known as the time of availment. The future liability of the pre-need company could be easily ascertained because tuition fees were being regulated by the Department of Education and annual increases were limited to below 10%.

Unfortunately, in 1992, the Department of Education deregulated tuition and other educational fees. One college raised its fees by 28% in one year. The decision of the DepEd ruined this business model of the pre-need companies.

Most pre-need companies stopped offering traditional open-ended plans and switched to fixed plans. These are plans which limited the liabilities of the pre-need company to predictable, fixed amounts in the future, at the time of availment.

But a few pre-need companies sold a mix of fixed and traditional plans and, of course, the traditional open-ended plans were by far the more popular products because they insulated the plan holder from the risk of tuition increases. It was the pre-need company that was burdened with this risk.

Because there is a lag time of about 8-15 years between the time the company collects the premium from the new plan holder and the time it has to pay out the tuition fees, the pre-need companies enjoyed some peace and quiet in the few years after 1992. But the business model of the traditional plan was bound to manifest its flaws in due time.

For better or for worse, the 1997 Asian financial crisis telescoped the honeymoon period of the pre-need traditional plan sellers. The economy entered a period of low growth, low demand and low interest rates. This meant that monies in the trust funds of pre-need companies began to earn a rate of return much lower than they projected when they sold the plans years earlier.

But CAP continued to push its traditional plans in order to maintain its market share and, probably, for the corporate parent to pile up commissions and corporate profits because the first two years of their collection go into their pockets as commission and management fees.

It was only in 2002, 10 years after the DepEd deregulated tuition fee, that the Securities and Exchange Commission (SEC) ordered CAP to stop selling traditional plans. Today, 91% of CAP's plans are traditional. Other companies have only about 10% to 20% of their existing plans in the traditional variety.

The first red flag came up in September 1997 when the SEC found the CAP Trust Fund deficient by P391 million.

When the Senate commenced the first of its four hearings in August 2002, CAP's deficiency had risen to P3.1 billion.

Four months later, in January 2003, CAP's actuary reported a deficiency of P15.5 billion.

In May 2004, the SEC Oversight Board, which was organized because CAP was obviously in dire straits, declared that CAP was insolvent with a trust fund deficiency of P17.2 billion.

On May 9, 2005, last month, the SEC reported to us that the trust fund deficiency was now P21 billion and rising.

The total present value required of the CAP trust fund is about P26 billion. It has less than P5 billion at present.

The SEC has been criminally remiss in its regulation of CAP and Pacific Plans. In the case of CAP, assets deposited in the Trust Fund have been overvalued. For example, MRT bonds were carried at the value of P3.5 billion in their November 2004 report. By March 2005, what remained was only P441 million.

The bonds that have been booked at $26 million or P1.4 billion was sold for only US$7.8 million or P429 million for a loss of over P1 billion. Worse, from 1998 onwards, almost 100% of the trust fund investments made by CAP were in related companies of the Sobrepeña family: Fil-Estate Land, Fil-Estate Management, Nasugbu Properties, Camp John Hay, MRT Light Rail, and others. All were criminal violations of the rule on trust fund management where the trustor shall not have an interest and shall not dictate the investments made by the management of the trust fund.

Out of the required present value investment of P26 billion, CAP only shows a balance of P4.7 billion today in its trust fund, and much of that amount is in inflated real estate.

For example, CAP sold all its buildings. Those buildings that we see all over the country which house the supposed headquarters of the CAP were all sold by CAP Corporation to the trust fund at highly inflated prices, and they do not pay rent. So there is no income from that part of real estate.

Then let me go to Pacific Plans.

Before 2004, Pacific Plans, Inc. had a plan holder base of more than 400,000. In 2003, Pacific Plans, unlike CAP, reported a surplus of P1 billion in its trust fund with a present value of P11.272 billion against a liability of P10.299 billion. The trust fund surplus in 2004 was P600 million.

On August 12, 2004, unbeknownst to its plan holders, Pacific Plans, Incorporated a wholly owned subsidiary called Lifetime Plans, also a pre-need company, to which the fixed-value plans of PPI were transferred. This left PPI, the mother company, with 34,000 holders of open-ended traditional plans. Eight days later, Pacific Plans approved the sale of its stake in Lifetime to Great Pacific Life Holdings, owned by the same family, for a value of P205 million. In the end, PPI reported a net loss of P278 million.

In January 2005, GPL Holdings sold Lifetime shares to another holding company called Exemplar Holdings which is capitalized at P100,000. In April 2005, PPI then filed with the courts for petition for suspension of payment of tuition fees of the 34,000 plan holders left in PPI and for rehabilitation of PPI.

Again in violation of the requirement and the rule of the SEC on trust funds, a related company, RCBC Trust — RCBC standing for Rizal Commercial Banking Corporation – was appointed by PPI as the trustee of the plan holders' trust fund.

The apparent reason for PPI's sudden debacle is the decision to transfer a substantial part of its assets to Lifetime while retaining the unprofitable open-ended plans in the original company, PPI. There was no transparency whatsoever – no meeting with the stakeholders, particularly the plan holders of PPI, when this action was undertaken. And considering that a transfer of substantial assets normally runs the risk of being taken as a fraudulent transfer, there should have been utmost transparency when Lifetime was incorporated and when the subsequent sale or offloading of Lifetime shares by PPI was undertaken particularly because it was also to a related company.

The haste with which the decision was made and implemented and the circumstances of the subsequent buyers of Lifetime shares are what lawyers call *indicia* of fraud.

In this speech, I would also like to cover additional examples of victims of corporate fraud. For example, the Philippine Veterans Bank has been the topic of many news items. And we have discovered, for example, that about P1 billion had been lent to the companies of a director of the Philippine Veterans Bank, a Mr. Romeo Roxas, who has no business sitting in the board of the Philippine Veterans Bank because he is not a veteran or the son of a veteran.

The Committee on Banks, Financial Institutions and Currencies was supposed to have held a hearing last Wednesday on Philippine Veterans Bank but it was suddenly cancelled.

We discovered that in September 1995, Mr. Roxas sold 250 hectares to Fil-Estate Land, Incorporated and CAP Trust Fund for the amount of P750 million.

We wonder if this was a proper valuation. Actually, what the Trust Fund acquired was an undivided share in a 1,000-hectare property that was overpriced to the tune of P3 million per hectare. The books would show that the CAP Trust Fund paid in full but the CAP Trust Fund still mortgaged the property to Philippine Veterans Bank for P333 million. Why? We cannot understand.

The title that was submitted to Philippine Veterans Bank does not exist. This Representation has been able to dig up the titles that were submitted to Philippine Veterans Bank and it referred to a certain

Veterans Bank and it referred to a certain Lot B-4 that on the subdivision plan does not exist. What they had was B-3 and, therefore, B-4 titles were all spurious.

The title supposedly emanated from Land Registration Case No. 7637, Register of Deeds of Batangas, which covers 314 square meters, not 1,000 hectares.

Then there is another case, the Universal Leisure Club Shares. In 1997, ULC registered and sold P2 billion worth of shares, promising very lucrative land development projects. The ULC also invested in subsidiaries of DMCI, a listed company. The ULC land titles were later found to be spurious or encumbered by CLOA claims under the Comprehensive Agrarian Reform Law.

In 2004, the SEC cancelled the registration of the club shares and found fraud, and yet the ULC has not been taken to task by the SEC for these fraudulent practices.

Two issues arise today.

First, the plan holders have been asking to air their complaints, their experiences, and their sad stories before the Senate. The Committee on Banks, Financial Institutions and Currencies has not held a hearing since February 4 on their complaints.

Last week, a hearing was held but it was specifically on the provisions of the Pre-Need Code. We are asking the Senate to take heed of their complaints.

In a society where you bottle up what people feel are legitimate grievances only leads to more violent reactions.

As John Kennedy said, "Those who do not make peaceful evolution or peaceful change possible make violent revolution inevitable."

The second point is the crying need in this country for a total consumer protection act, much like what they have in the United States and Great Britain because the little boy, the little girl cannot now go to school and their parents have no other recourse – they cannot go to courts, it is too expensive unless they bond together and file a class action suit – they are not able to find redress for their grievances. They were promised, they were given a song and dance when they sold those education plans and they said, "*Ang sinabi po ng mga* sales person, *sigurado po ito, makaka-enrol po iyong mga anak ninyo sa Ateneo, sa La Salle, sa UP, sa UE, sa FEU,* o *saan ninyo gusto, bayaran lamang ninyo ang* premium and in eight to 15 years time that son is ready to matriculate your tuition fees, no matter what the tuition fees will be at that time they are assured of being paid." *At ngayon po ang sinasabi nila, "Oops sorry ha, kulang pala ito."*

First, let us check. *Kung talagang kulang,* if it was well-managed, but it fell short, then I think they have valid redress to go to the courts and ask for rehabilitation. But if the funds were mismanaged, then I think they have to answer to the plan holders and not claim that this is a *force majeure* situation because of the Asian financial crisis or this is a special circumstance which under the fine print of the contract allows the pre-need company to default on its obligations. So the plan holders are asking the Senate to undertake for the purpose not only of those who have been victimized yesterday and today, but for the purpose of all those remaining plan holders whose plans do not yet avail, whose children have yet to go to school and for their children's children. So that eventually, we will evolve in this country a system of laws that will protect not only the rich but the poor; not only the high but the low; not only the powerful but the powerless; and perhaps, we might find a way clear through the collective wisdom of the Members of this Chamber to building a better, kinder, more useful society in the years to come.

INTERPELLATION OF SENATOR ROXAS

Preliminarily, Senator Osmeña clarified that he has no intention of removing from the jurisdiction of the Committee on Banks, Financial Institutions and Currencies the power to craft the Pre-Need Code but that he wanted other committees to be given a chance to listen to the complaints of the many

other industries with the thrust of formulating a consumer protection structure in the country. He noted that in the U.S. Senate, issues are sometimes referred to five or ten committees; for instance, the 9/11 incident was referred to 13 committees, including the Committees on Defense, Intelligence, and Local Governments; hence, more than a dozen committees conducted hearings on the same issue, but from the perspective of the jurisdiction of the committee.

Senator Roxas stated that specifics with respect to CAP and Pacific Plans have been dealt with in other fora. He said that he wanted to deal with the business model, particularly to find out if it was unviable, designed anomalously and, perhaps, sold fraudulently. Adverting to Senator Osmeña's speech, he noted that there could be some basis for the inability of these companies to redeem the promises they made if, indeed, there was good management. But, as in the case of all things, he believed that in business, people sometimes make money, sometimes they lose money, but what is important is that the insurance companies should have conducted its business pursuant to their fiduciary responsibility.

Senator Osmeña replied that indeed, that would be the case if the Senate had conducted sufficient hearings on the issue to prove the allegations and asked for the computations or formula by which originally the pre-need companies undertook to sell open-ended plans. He wondered how a company like CAP can gamble on real estate whose prices are fluctuating. He said that CAP invested heavily in Fil-Estate Land which, like other real estate companies, was already in the downswing since 1997 and moreover, CAP continued and was allowed by the SEC to buy shares of Fil-Estate companies that are not even listed in the stock market. In other words, he said, if the company is sold today, there is no secondary market for it because it has lost money.

Senator Roxas stated that since it was not an instance of simple business unviability, perhaps there was an anomaly particularly with respect to the use of funds which CAP invested in its own companies.

Asked how these funds are normally used, Senator Osmeña pointed out that trust funds have two parts: directed trust and non-directed trust. He explained that directed trust allows one to hold money but he/she is being directed where to invest it. He said that in this case, while the trustor or CAP cannot tell the trustee or the bank where to invest, it was able to do so, and that it was also able to obtain SEC clearance.

Moreover, Senator Osmeña said that even if companies like CAP had a directed trust, they are not allowed to invest money in a related company since the money is not theirs. In this instant, he said, there was an element of self-dealing because the company bought shares of stock of a relative company. Essentially, he observed that there was a flagrant abusive practice that CAP maintained all the way up to the time it was suspended from selling plans in 2003 or 2004. He mentioned that one of the companies involved is Camp John Hay which owes the government P4 billion. He wondered why CAP was allowed to further lend money or invest in shares of Camp John Hay in 1998, 2000 or 2002. He believed that Camp John Hay Development and the Nasugbu Properties Development are dead: laying out 2,000 to 3,000-hectare golf courses in partnership with some other groups produced nothing. Moreover, he wondered why CAP was still allowed to invest and buy about a billion pesos worth of shares in all those companies, as well as MRT bonds. He revealed that CAP invested $12 million in the early 1990s but since it was getting into trouble, it converted the $12 million into $87 million of MRT bonds which are bonds that do not pay interest. Possibly, he said, the bonds are to be sold at a deep discount, depending upon the tenor of the bonds, to earn interest way above the equivalent yields in the market, maybe 14% to 15%. But he surmised that the CAP's declared losses of P1 billion from the sale of these bonds, as well as the amounts of P8.7 billion and P4.7 billion, are all bloated.

Asked what the Camp John Hay Development, the MRT, the Nasugbu Properties Development have in common, Senator Osmeña replied that all are owned and managed by the Sobrepeña family.

Senator Roxas opined that the possible anomaly in the use of the trust funds is another aspect for inquiry. With regard to the SEC's prohibition on CAP to sell open-ended plans in 2002, ten years after the DepEd deregulated the tuition fees in the tertiary level, he noted that during that period, CAP continued to sell a product that a reasonable or an honest appraisal of finances would possibly say is unredeemable and undeliverable. He asked if CAP knew it could not catch up with the values of the

plans when they are redeemed. Senator Osmeña believed that it all depended on the assumption of CAP of the growth rates in the real estate market, so that from 1993 to 1996, when it appreciated at a rate of 10% to 20% a year, CAP thought this would go on and on. Any prudent manager, he asserted, could have used, for instance, a mix of 60% government bonds and 20% in triple A equities like PLDT or Ayala Corporation or Bank of the Philippine Islands or SM Prime, and maybe 20% in real estate.

However, Senator Osmeña stated that CAP practically put everything in raw lands that have been overpriced. He agreed with Senator Roxas that the Body should look into whether the attempt to defraud plan holders was deliberate since there was a gap between the time when premiums were collected and the time the plan holder would begin to avail of the trust fund.

Senator Roxas recalled that when tuition fees were deregulated in 1992, the real estate business was vibrant and continued to be vibrant until 1997 when the Asian fiscal crisis occurred. He said that the company should have stopped selling its product then. Senator Osmeña said that CAP did the opposite, with the consent and approval of the SEC.

Senator Roxas pointed out that in transactions of such nature, there are unviable business decisions. He stressed that CAP had engaged in the anomalous use of the trust funds and thereby broke the fiduciary bond between the seller and the plan holder. He added that there was fraudulent sale of the product since CAP knew it could never be redeemed, and it needed cash flow for interim payments. He posited that these are the areas which need to be examined to protect the consumers.

Agreeing thereto, Senator Osmeña observed that in the Philippines since more and more people are able to afford pre-need plans, stocks and mutual funds, government should ensure that they are not drawn into schemes of Multitel, Jenki and Ogami that promised returns of 6% to 10% a month which, however, were only paid for the first three months and they never saw their money again.

Asked what action the Senate should expect from the SEC until the Pre-Need Code is enacted into law, Senator Osmeña stated that the Pre-Need Code alone is not the solution to the problem as the Body should also look into the Securities Regulation Code. He explained that the SEC does not have enough power to place a pre-need company in receivership. In the case of CAP, he noted that the SEC merely suspended its license to sell but it still collects premiums on plans sold earlier; it is not depositing sufficient funds in the trust funds but are using them in other investments. He pointed out that the problem with the SEC is political interference. He stressed that the owners of CAP have powerful friends, some of whom even serve as directors of the company. In addition, he noted that the SEC middle-level management has been frustrated by the unwillingness of the Commissioners to act on their recommendations.

Senator Osmeña cited the September 2004 audit findings of the Oversight Committee: CAP as a corporation is insolvent; it has minus P5.9 billion in capital – P18.5 billion assets with P23.9 billion in liabilities. He said that his frustration even drove him to say to Chairman Fe Barin that she was open to criminal charges for not doing her duty as chair of the SEC.

Further, Senator Osmeña stated that the findings showed there was an issuance of preferred stocks worth P6 billion for 3,000 hectares in Dingalan, Aurora owned by Mr. Romeo Roxas with a valuation of P200 per square. He said that the SEC commissioners did nothing about the recommendations.

Senator Roxas proposed that the Committee on Social Justice, Welfare and Rural Development also look into the matter as it involves social justice in the sense that the collapse of the pre-need companies has jeopardized the future of the children of the plan holders.

Senator Osmeña stated that if the Members would agree to the proposal, he would not turn down the honor of helping the Committee on Trade and Commerce to listen to the legitimate complaints of the plan holders who have been short-changed.

INTERPELLATION OF SENATOR LIM

At the outset, Senator Lim commended Senator Osmeña for a very telling speech on a hoax being perpetrated on plan holders.

As to how the Sobrepeñas were able to commit the scam without the proper government agencies

doing anything about it, Senator Osmeña stated that the query should be directed to former SEC chairpersons Yasay and Bautista. He said that he had questioned the lack of tight regulation by the SEC of certain companies that violated SEC rules and regulations, *Bangko Sentral ng Pilipinas* rules and several laws. He added that the agencies even agreed to further dissipate the assets of the trust funds. He opined that the Committee should look into the aspect of a regulator not doing its job.

Senator Lim stated that the scam could not have been perpetrated without the active participation of certain officials from the law enforcement and regulatory agencies. He reasoned that the SEC, *motu proprio*, could have prevented the scam from worsening.

Senator Osmeña reiterated that the SEC had appointed three oversight committees which all came out with the same conclusion that CAP is insolvent; however, no action was taken by the commissioners.

As to how much the Sobrepeñas were able to acquire from the payments of the plans, Senator Osmeña estimated to be roughly P12 billion. He said that it is difficult to get the exact figure since there are no financial reports from the time CAP began selling pre-need plans in 1980.

Senator Lim asserted that there is evidence of deliberate fraud because the funds were invested in CAP sister companies that were having financial difficulties.

Senator Osmeña stated that SEC does not have accurate data and cannot even give a breakdown of the unlisted equities. He posited that between MRT and the real estate companies, it could be more than P10 billion. He said that since 1998, all of CAP investments, except for Bank of Commerce, were in Sobrepeña companies. He added that since CAP holds 60% of the trust funds and has three seats in the board of the Bank of Commerce, it directed the investments of the trust funds.

On another matter, Senator Osmeña stated that of the 60,000 hectares of land in Dingalan, Aurora, the Supreme Court ruled that ownership of the 30,000 hectares is invalid because Mr. Romy Roxas based the land titling on the *Titulo de Propriedad* that according to the Supreme Court had long ceased.

Senator Lim inquired why the Philippine Veterans Bank accepted the collateral when it should have investigated the authenticity of the land titles. He asserted that everything was a calculated hoax to take advantage of the trust fund. He commented that it is a classic case of transferring money from one pocket to the other. Senator Osmeña pointed out that this is only half true since the trust funds belong to the plan holders and not to the Sobrepeña family, adding that the money in the trust fund that should have earned interest over the years, was intended to finance the tuition fees of the children of plan holders. He posited that when the trust fund manager uses the money to buy properties, it is self-dealing.

Further, Senator Osmeña stated that the spurious titles to the Talisay property were used to collateralize two loans: one for P550 million to MAEC; and P330 million to CAP. He disclosed that the MAEC loan was approved by the Philippine Veterans Bank in just two days because Romy Roxas controlled its board of directors. Precisely, he said, he asked for an investigation into the matter with the end in view of amending the charter of the Philippine Veterans Bank and ensuring that the shares shall be distributed free to the veterans' families. He believed that the reopening of the PVB, which was plundered during the martial law regime and rehabilitated in 1992 when government waived all penalties which, to him, was another crime. He lamented that veterans have been shunned away from the meetings of the PVB board and stockholders.

Queried how much capital was infused by the Sobrepeña family into CAP, Senator Osmeña said that the original paid-up capital over the years reached P150 million, as recorded by the SEC. Relative thereto, Senator Lim related that Mr. Raul de Mesa, an officer of the Bank of Commerce, informed him that contrary to reports, CAP did not put P8 billion in the bank. He explained that the CAP invested the funds in sister companies and what it gave to the Bank of Commerce were the investment papers.

Senator Lim underscored the importance of an investigation to determine what transpired. Furthermore, he underscored that government should protect and assist the victims of the scam. He added that when he called the attention of Justice Secretary Raul Gonzales to the issue, the latter immediately ordered the NBI to conduct an investigation which is ongoing. He pointed out that

Atty. Maricel Lopez took up the cudgels for 19 plan holders and initiated a class suit. He proposed that the Senate, through Senate President Drilon, use its influence to expedite the NBI investigation so that the officers of CAP can be charged with syndicated estafa. He observed that people charged with estafa are afraid of imprisonment, thus, it is imperative for government to take drastic action to protect the plan holders.

Agreeing that Senate President Drilon is the best person to influence the Justice Secretary to get things moving, Senator Osmeña welcomed the filing of syndicated estafa charges against those responsible since it is a non-bailable offense.

At this juncture, the Chair remarked that Senator Lacson is the chair of the CA Committee on Justice and Human Rights that is reviewing the appointment of the Justice Secretary.

INTERPELLATION OF SENATOR ENRILE

At the outset, Senator Enrile commended Senator Osmeña for reviving the CAP issue. He queried what triggered the four hearings in August of 2002. In response, Senator Osmeña related that an article by Ma. Elena Torrejos in the *Philippine Daily Inquirer* exposed a P2.5 billion CAP trust fund deficiency; however, when the hearings started, the amount ballooned to P4.1 billion. Having attended all the hearings, he said he compiled all the information on the pre-need industry; unfortunately, he was not able to cover everything he wanted to ask. He stated that it was not until he got hold of the AGILE study on the pre-need industry that he got an overview of the esoteric nature of the industry. He recalled that he requested new hearings in 2005 in order to craft a good law based on specific information from the companies, the SEC and the plan holders.

Senator Enrile mentioned that in 2002, Senate Resolution No. 381 filed by Senator Lacson raised the issue of wrong investments by pre-need companies that caused tremendous losses, however, there was no resolution of the issue in spite of four hearings. He stated that he supports any inquiry related to this matter.

MANIFESTATION OF SENATOR ENRILE

Senator Enrile manifested that the matter involves SEC which is under the jurisdiction of the Committee on Banks, Financial Institutions and Currencies; nonetheless, he would support a motion to refer it to the Committee on Trade and Commerce with the former as the secondary committee. He requested that Senator Osmeña's speech be heard along with the anti-trust bill that he authored. He expressed the belief that it is the best measure to protect the consumers.

INTERPELLATION OF SENATOR MADRIGAL

Asked by Senator Madrigal to clarify why the Committee on Banks, Financial Institutions and Currencies did not hold enough hearings, Senator Osmeña replied that relative to the first and only hearing on his January 31st privilege speech, he was able to raise some but not all issues with regard to the management of the College Assurance Plan. He said that the Body wants to pass a Pre-Need code because there is only one paragraph on pre-need plans in the Securities Regulation Code but it was only in 2002 that the Body was able to seriously look into the pre-need industry. He stated that he would be willing to furnish the senators with a copy of the professional study made by AGILE that would be helpful to them.

In reply to another query, Senator Osmeña affirmed that there are over two million pre-need education plans, adding that CAP alone has 780,000 plan holders while Pacific Plans has about 400,000.

On whether the plan holders could no longer send their children to school as the agents of the pre-need companies promised, Senator Osmeña replied that this is not exactly true because in the case of Pacific Plans, only 10% of its plan holders are in traditional plans while 90% are in fixed plans that are healthy since the trust fund earns the return needed to meet the future obligations of the pre-need company or the plan holders who would avail of their education plans. On the other hand, he said that CAP is in deeper trouble because 91% of its plan holders are in traditional plans while only 9% are in fixed plans.

Asked how the CAP plan holders could get justice, Senator Osmeña said that the plan holders found a champion in Atty. Maricel Lopez who helped them file a case in court outlining a plan that shall force CAP to implement the promises it made in its various education plans, and a presentation of

the quality of the assets of the trust fund and how these have been mismanaged by the managers and owners of CAP.

As to the deficit of the trust fund of CAP, Senator Osmeña disclosed that while the present value of the trust fund of CAP on education plans alone should be about P26 billion in order to meet future liabilities at a given assumed rate of return, CAP has only P4.7 billion.

Asked where CAP could get the funds to pay the plan holders, Senator Osmeña stated that CAP is hopeless because nobody would invest money in a company that is in a huge deficit, and it would be impossible to save the trust fund in such a situation. He pointed out that CAP is the only pre-need company that pays its founders and directors a 1% override commission on every sale made by its agents.

Asked who would be liable to the stockholders of CAP and whether government could attack the Sobrepeña assets, Senator Osmeña said that if charged and found guilty, CAP officers would be made to pay the price; unfortunately, even the companies that CAP invested in are losing money. Besides, he said, there are not too much assets to attach in this country.

On whether there was premeditation in the actions of Pacific Plans from August 12, 2004 to April 7, 2005, Senator Osmeña stated that although it was an orderly liquidation of its liabilities in traditional plans, Pacific Plans did not inform its stakeholders about its plan of action and that the assets it left behind are in the form of Napocor bonds that nobody would buy because Napocor has been losing billions of pesos yearly.

Senator Madrigal believed that the case involves criminal minds, and that the haste with which the decision was made and the circumstances of the subsequent buyers of lifetime shares are indicia of fraud. She said that these plan holders have found a great champion in Senator Osmeña, and that she was joining his cause in fighting for justice for those who have lost money and peace of mind. She expressed hope that the Senate would conduct the proper investigation and enact the necessary legislation to strengthen the SEC. People seem to think that capitalism in the country is a free-for-all and powerful businessmen seem to disregard the rules, she added.

Senator Osmeña pointed out that according to latest studies made by the Asian Development Bank and the World Bank on the issue of regulation in the countries around the world, the Philippines always ranked one of the worst in Asia, if not in the world. Given the situation, he said that foreign investors would not even think of putting their money in the Philippines where the level of regulatory risk is too high, its citizens could not get swift justice and there is no consistency in the law.

In closing, Senator Madrigal thanked Senator Osmeña for giving the Senate a wake-up call.

INTERPELLATION OF SENATOR PIMENTEL

Asked by Senator Pimentel what he hopes to accomplish, Senator Osmeña replied that he intends to find out the specific problems in pre-need and other industries which had been publicized as areas of fraudulent practices where many have been victimized with little hope or redress; and to look at the regulators, many of whom have sold out to the industries they are supposed to regulate, an insidious practice that has affected the level of domestic and foreign investments. He observed that in surveys, the Senate has sunk to such a low level in the eyes of the people and this is one instant where it could prove to the people that it is useful to them and it can be their voice and forum, he said.

Senator Pimentel said that he was sure that the majority of the Members share the concerns of Senator Osmeña raised in his speech but he thought these were already being taken up by the committee to which the first resolution was referred.

Senator Osmeña reasoned that if the committee to which the matter was referred had been conducting hearings like it has done on two other not so important issues that do not have a wider impact, he would not have delivered the speech. In this regard, he disclosed that he has a letter from the committee saying that hearings would just arouse passions. He said people are of course passionate about being cheated for they have worked hard and invested huge amounts of money on pre-need educational plans only to be told later on that they would not be paid and they would like to find out why they could not be paid. He pointed out that the plan holders feel that not only were they cheated, but there is also a cover-up going on not only in the

cover-up, he gave the assurance that it would not continue. He lamented that the committee refused to conduct hearings for four months and it was only on February 4, 2005 that the first hearing was conducted and the second one only last month. He believed that that this is not an indication of the level of interest or importance that the committee has given to the issue.

Asked if the speech should be referred to another committee, Senator Osmeña informed the Body that the resolution he filed was signed by 16 senators and referred to the Committee on Trade and Commerce that is now tasked to conduct hearings on the matter, with focus on consumer protection. He expressed hope that just like those who are now in jail as a result of the Senate investigations on multilevel selling scams or syndicated estafa, justice would be served with a transparent explanation and accountability for those responsible for the collapse of the pre-need companies.

As to what kind of relief the plan holders can expect from the government in the meantime that the hearings are being conducted, Senator Osmeña replied that the first committee hearing would determine the problems and find out what really happened. He said that he would ask the regulator why the pre-need companies were allowed to put the trust funds in trustee banks that the pre-need companies owned when such practice is not allowed.

Senator Pimentel said that as someone whose driver and cousin also spent much on pre-need educational plans for their children, he feels the government should be more decisive in putting lawbreakers, no matter how big they are, in jail. In reaction, Senator Osmeña believed that if the citizens know that there is a level playing field, everybody would follow the law.

In closing, Senator Pimentel expressed his support for the efforts of Senator Osmeña to give justice to the pre-need plan holders who were duped and manipulated by big business. Senator Osmeña believed that it is the duty of the senators to join forces with all the victims of the pre-need companies.

INQUIRY OF THE CHAIR

Asked by the Chair, Senator Osmeña clarified that Mr. Romeo Roxas sold an undivided 30% interest in the property in Talisay, Batangas, to CAP for P700 million and then CAP used this 30% ownership to collateralize a P330 million loan from the Philippine Veterans Bank.* However, he disclosed that another P550 million loan was extended in January 2003 by the PVB to a company named MAEC that used a fake title to the Talisay property as collateral; it was after MAEC which took over the Bataan Polyethelene Plant.* In this regard, he pointed out that without due diligence, the PVB which has a total loanable resource of only P6 billion, approved the loan in two days.

Asked by the Chair if he would be averse to bringing the matter to the attention of the *Bangko Sentral ng Pilipinas*, Senator Osmeña replied that he was preparing a report and would ask the BSP to look into it. He pointed out that a committee hearing on this matter last Wednesday was suddenly cancelled.

COAUTHOR

At this juncture, Senator Osmeña manifested that Senator Cayetano is coauthor of Proposed Senate Resolution No. 273.

INTERPELLATION OF SENATOR CAYETANO

Asked by Senator Cayetano if numerous plan holders have requested a venue to air their grievances, Senator Osmeña replied in the affirmative.

On whether the plan holders have not yet been given the opportunity to air their grievances, Senator Osmeña recalled that four hearings were held in August before he was able to appreciate the magnitude of the problem; another hearing was held in February 4, 2005 as a result of the privilege speech he delivered on January 31, 2005, after discovering that the Senate entered into a contract with CAP Health, a CAP subsidiary; and another hearing was conducted last week which the Pre-need Code.

Senator Cayetano recalled that her own experience was very similar to all plan holders: as a new lawyer earning barely P10,000 a month, she was convinced to get a pre-need plan worth P200,000 payable within five years, an investment that she believed was a good decision until she started hearing stories that plan holders might no longer be able to recover the money they paid for the plans. She stated that she was also concerned about the

*As corrected by Senator Osmeña on June 8, 2005

plan holders as she expressed her support for Senator Osmeña's efforts to look into the matter at the soonest possible time, to set new standards through legislation, and ensure that justice is given to the plan holders.

Stating that he symphatized not only with Senator Cayetano but also with all the victims of the pre-need companies, Senator Osmeña said that pre-need plans and banking services are good products but if scammers are allowed to get away with their nefarious practices, the entire banking industry would be affected. In this regard, he informed the Body that his proposal is to transfer the regulatory function of the SEC to the Insurance Commission because pre-need plans are almost similar to insurance policies in the sense that premiums are paid by plan holders for a number of years in return for certain endowments or lumpsums in the future.

INTERPELLATION OF SENATOR BIAZON

Asked by Senator Biazon on the effect of the transactions of Mr. Roxas on the operations of the Philippine Veterans Bank, Senator Osmeña replied that the banking industry and the banks operate on trust and no client deposits his money in the bank unless he is sure he can withdraw it when he wants to. He observed that in the two transactions, the Philippine Veterans Bank lent out P900 million to two related companies on the basis of spurious or questionable titles. These incidents, he said, could cause the clients to lose their confidence in the bank and withdraw their money. He posited that it is very dangerous if the banking regulator does not take early cognizance of the problems that are developing in a particular banking institution becaus eit could eventually collapse. Fortunately, he noted, the PDIC insures up to P200,000 of the individual account which is a safety net; however, there is no safety net for the pre-need industry.

Asked whether it has been verified that Mr. Roxas is neither a veteran nor the son of a veteran, Senator Roxas disclosed that the veterans had provided him information that Mr. Roxas is the son of a Santiago Roxas who was the division superintendent of schools in Cagayan de Oro from 1938 to 1943. He stated that the registered veteran was Santiago Roxas from Bulacan who died childless and left his estate to a niece. He said that recently, in an apparent effort to qualify, Mr. Roxas claimed that he is the illegitimate son of Santiago Roxas from Bulacan.

Senator Biazon stated that the Veterans Federation of the Philippines has individual affiliates who are either veterans or children of veterans that entitle them to the veterans benefits including the availment of the services of the Philippine Veterans Bank. Considering that Mr. Roxas reportedly now owns P2 million or 8% of the bank shares, he observed that the former could invest the funds as he sees fit. He asked if a study was made to determine whether such act is legal or illegal.

In response, Senator Osmeña stated that the *Bangko Sentral ng Pilipinas* was asked to look into that particular issue and recently came out with the conclusion that the Securities and Exchange Commission is the proper body to look into the qualifications of the buyers of stock of the Philippine Veterans Bank. He noted that the Philippine Veterans Bank would go through the same process of raising the issue, this time before the SEC.

Senator Biazon bared that he had received complaints that the election conducted during the recent annual stockholders meeting of the Philippine Veterans Bank was rigged.

Asked to which committee the matter would be referred, Senator Osmeña replied that he would be preparing a separate resolution asking for a broader investigation into the matter, including the reported scams in the PVAO. For his part, Senator Biazon pointed out that the veterans issue concerns three aspects: the P18 billion to P19 billion backlog in disability pension for veterans who have reached the age of 70; the P12 billion backlog in regular pension for retirees; and the P5,000 additional old-age pension for a retiree who has reached the age of 65. All in all, he added, the government owes the veterans and retirees P36 billion.

Asked by Senator Osmeña whether he wanted to attach certain government assets so that these could be sold and the veterans could be paid, Senator Biazon replied that he has some proposals including the issuance of a certificate of indebtedness by the government to the veterans for two benefits – old-age pension and the disability pension.

Senator Osmeña invited Senator Biazon to join him in crafting the resolution to ensure that the

matter shall be referred to the Committee on National Defense and Security. Senator Biazon welcomed the chance to look into the issues.

REMARKS OF SENATOR PANGILINAN

Senator Pangilinan shared the concerns of Senator Osmeña as he recalled that he had filed a resolution calling for an investigation into the pre-need plans. He added that he would await the action of the Committee on Trade and Commerce relative to the consumer protection aspect of the matter.

REFERRAL OF SPEECH TO COMMITTEE

Upon motion of Senator Pangilinan, there being no objection, the Chair referred the speech of Senator Osmeña and the interpellations thereon to the Committee on Rules.

INQUIRY OF SENATOR ROXAS

At this point, Senator Roxas queried what particular matter has been referred to the Committee on Trade and Commerce. He stated that if it is the resolution that Senator Osmeña filed yesterday, the Committee could already start its work.

Senator Osmeña conceded that, indeed, there are overlapping aspects that both the Committee on Trade and Commerce and the Committee on Banks, Financial Institutions and Currencies should take cognizance of. He advised the committees to avoid trying to identify what aspects belong to a particular committee.

Senator Roxas gave assurance that as chair of the Committee on Trade and Commerce, he would look into the consumer aspect. Further, he sought clarification with respect to the mandate of the Committee so as to avoid disputes over jurisdiction that might impede its work.

Senator Osmeña requested the Committee to allow the airing of complaints by consumers. He stated that if the Committee decides later on to contribute by way of proposing amendments to the Pre-Need Code, it could do so by forwarding its recommendation to the chair of the Committee on Banks, Financial Institutions and Currencies or Senator Roxas could present them during the deliberations on the Code. He underscored that there was no intention to remove the power of the Committee on Banks, Financial Institutions and Currencies to craft the Pre-Need Code. He posited that while the scope of a committee is limited, nonetheless, it should have a well-rounded picture of whatever aspect of the industry it is looking into and it should not be afraid to ask questions.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 6:06 p.m.

RESUMPTION OF SESSION

At 6:07 p.m., the session was resumed.

MANIFESTATION OF SENATOR PIMENTEL

Senator Pimentel made the following manifestation on the matter of the replacement of Senator Enrile as member of the Commission on Appontments:

> Last May 24, 3005, I manifested on the floor that the Minority was replacing Sen. Juan Ponce Enrile as one of its representatives in the Commission on Appointments with Sen. Jamby Madrigal.
>
> There were some discussions for and against the change.
>
> But up to today, there has been no resolution on the matter.
>
> *Sole prerogative*
>
> We believe that it is the sole prerogative of the Minority to nominate its representatives to the Commission.
>
> Soon after the start of the First Regular Session of the 13th Congress, it was I, as Minority Leader, who stood up to inform the Body that our representatives to the Commission were: Sen. Sergio Osmeña III, Sen. Loi Ejercito Estrada, Sen. Panfilo Lacson, Sen. Edgardo Angara, and Sen. Juan Ponce Enrile.
>
> That was done after due consultation with the members of the Minority.
>
> And without any discussion, the matter was given its stamp of approval by the Chamber in a *pro forma* manner.

There was no other way but for the Senate as Senate to do so. The Senate as Senate could not have said "No" because by right and in practice, it is the sole prerogative of the Minority to name its representatives to the Commission on Appointments. The Majority had to "approve" as it were the Minority nominees to the CA because the act of sending representatives of the Senate to the CA needed the nod of the Senate as a whole. First, to bind it as a Body to its choices – officially the Majority and the Minority for membership in the Committee on Appointments.

Second, to inform the CA that the senators who were chosen by the Senate are the only ones duly authorized to represent the Senate in the Commission on Appointments.

Pro forma

The *pro forma* nature of the Senate approval of its members for the CA is indicated by the fact that even the choices of the Majority – let me repeat that – even the choices of the Majority as its representatives to the Body, need also the conformity of the Senate as Senate and that includes not only Majority senators but Minority senators as well.

To help clarify matters, the term *pro forma* according to the Web online research outfit, Wikipedia, comes from a Latin phrase meaning "as a matter of form". The *New Dictionary of Cultural Literacy,* the 3rd Edition for the year 2002, defines *pro forma* as "doing something" to satisfy "only the minimum requirements of a task and doing it in a perfunctory way". *Investopedia* adds that the Latin term translates into "for the sake of form."

To invest the term with a meaning other than that is a mere formal requirement, a formality, or a perfunctory function of the Senate as Senate would result in unwarranted or even ridiculous consequences.

Ludicrous situation

One can imagine how ludicrous the situation would become if we were to posit the view that the choice of the Senate representatives – majority or minority – to the CA was subject to the veto power of either blocs.

Now, after the five representatives of the Commission representing the Minority were chosen by us and nominally approved by the Senate as a body, they started to discharge their duties without any hitch all the way up to about two weeks ago.

The problem began when some members of the Minority complained that Sen. Juan Ponce Enrile appeared, in the words of Sen. Osmeña, to be lawyering for certain administration nominees to the Cabinet. Worse, he said, Senator Enrile did not even want to give our colleague from the Minority, Senator Madrigal, and other witnesses against DENR Secretary Mike Defensor, the right to be heard.

Minority caucuses

On the basis of that information, the Minority met in caucus twice on May 24. There, it was decided that Senator Enrile had to be replaced if the Minority position on certain cabinet nominees was to be given due hearing. And in that caucus, Senators Osmeña, Loi Ejercito Estrada, Alfredo Lim and I were present. Senator Enrile was not invited because he had previously taken a stand that he was no longer a member of the Minority and that he did not recognize me as the Minority Leader, which is all right as far as I am concerned. Mr. Angara, on the other hand, had been absent from Minority caucuses for some time that when the two Minority caucuses were held on that day, it was more or less understood that he would not be present anyway even if he were invited to it.

It must be said that Mr. Jinggoy Estrada left at one point during the caucus but was understood to have left his stand on any issue taken up there with Dr. Loi, his mother. When the consensus was taken, the Minority, without any objection, with one abstention (that of Senator Loi) agreed to replace Mr. Enrile with Ms. Madrigal at the CA.

Considering that the matter of who among the Minority members of the Senate should go to the CA is a prerogative of the Minority. We submit that the decision taken by ourselves on May 24 to let Mr. Enrile go and replace him with Ms. Madrigal validly stands as the position of the Minority.

The only reason why the matter had to be brought to the floor was: to make the replacement of Mr. Enrile by Ms. Madrigal official and as a matter of record; to enable the appropriate Senate officials to inform formally the officers and members of the Commission on Appointments for their guidance.

No veto power.

We did not and we do not submit the replacement of Mr. Enrile by Ms. Madrigal as our representative to the Commission on

Appointments for approval by the Majority of this Chamber. To do so would be to invest the Majority with the power that does not belong to it. Moreover, to do so would give the Majority a veto power over the choices of the Minority for membership in the CA. That would be extremely anomalous and it cuts through the imaginary, *Maginot* line, if you wish, that separates the Minority from the Majority for purposes of maintain-ing the proportional representation in the CA that is required of the parties in the Senate.

Now, let us take a look at the present composition of the Senate for purposes of this discussion:

Let us start with the Majority Group:

LP	(4)	Mr. Drilon Mr. Pangilinan Mr. Biazon Mr. Roxas
Lakas	(4)	Dr. Flavier Ms. Cayetano (CMD) Mr. Lapid (CMD) Mr. Revilla (NUCD)
NP	(2)	Mr. Villar Mr. Recto (Promdi)
PRP	(1)	Ms. Santiago
K4	(1)	Mr. Gordon
Ind	(2)	Mr. Arroyo Mr. Magsaysay
	(14)	

The Minority Group:

PMP	(3)	Dr. Loi Estrada Mr. Jinggoy Estrada Mr. Enrile
PDP-Laban	(3)	Mr. Pimentel Mr. Osmeña Ms. Madrigal
LDP	(1)	Mr. Angara
KKK	(1)	Mr. Lim
Ind.	(1)	Mr. Lacson
	(9)	

Formula for representation

Following the formula laid down in *Guingona Jr. v. Gonzales,* of dividing the number of senators per party by the number of senators elected and multiplying the quotient by 12 (number of Senate members in the CA), the proportional representation would be as follows:

(A) Majority – 14 ÷ 23 x 12 = 7.34;
(B) Minority – 9 ÷ 23 x 12 = 4.69

Since nothing prevents members of the Senate with fractional representation from uniting to be entitled to one seat in the CA, that is what the Minority did. And that is how we came up with a five-members delegation to the Commission on Appointments.

The Minority is aware that there are cases that narrowly defines "changes" in the membership in the CA. *Cunanan v. Tan* is one. *Daza v. Singson* is another.

Not applicable

These cases, however, are not applicable to the move of the Minority to replace Mr. Enrile as a member of the CA with Ms. Jamby Madrigal. We are not citing Mr. Enrile's changing his party affiliations as the reason for our call to replace him in the CA.

We are replacing Mr. Enrile because he has unreasonably blocked the right of the Minority to scrutinize in minutest details the capability, the capacity, or the character of the nominees to the cabinet and other positions in government that require CA approval. In effect, we believe that Mr. Enrile no longer reflects the positions taken by the Minority on the matter of approving or disapproving government nominees submitted to it by the President.

Judgment call

It is a judgment call that should, for the reasons stated earlier, be respected by the Majority whose intervention cannot but take the form of *pro forma* approval of the move of the Minority.

That being the case, we submit that replacing Mr. Enrile with Ms. Madrigal does not require other considerations than a recognition that the Minority must have ample authority to impose discipline in its ranks if it is to discharge its role as a responsible opposition.

As an aside, let it be said that two recent events in the Senate caused changes in the party affiliation of the members of the Minority. First, Ms. Jamby Madrigal left her former party, the PMP, to join the PDP-Laban that is represented in the Senate by Mr. Sergio Osmeña III and Mr. Aquilino Pimentel Jr. and second, Mr. Alfredo Lim formed a coalition with the PDP-Laban yesterday.

KNP no more

Mr. Enrile has no reason to run behind the skirts of his original party affiliation, the KNP, because the KNP has dissolved. It is gone as a political aggroupment. It can no longer be used by him to shield him from being replaced in the CA.

Again, let me stress that the Minority do not wish to have a thorough overhaul of their membership in the CA. They merely wish to replace Mr. Enrile with Ms. Madrigal in the Commission on Appointments.

No big deal

What is the big deal about it, I cannot understand. To repeat, it is a judgment call of the Minority that we wish the Majority to give its nod *pro forma* so that the practice and tradition of the Senate, in this regard, are not duly transgressed.

I could delve into the legal ramifications of proportional representation in the CA but, for the moment, that is not relevant. What is at stake here is the right of the Minority to remove one of their representations in the CA who no longer serves the purpose for which he was sent there.

That right belongs to the Minority and should be respected by the Majority.

Action needed

I submit that this Chamber should act on the matter that I have raised as the Minority Leader. All that is asked is that this Chamber should approve the manifestation, and if, pursuant to the requirements of the rules, a motion is needed, then, I so convert that manifestation into a motion—as a *pro forma* decision that does not in any way suggest that the Majority has the right to veto the designations of the members of the Minority of our representatives in the CA.

I suggest that in this particular instance, the infamous word "noted" so notoriously resorted to by the Majority in the congressional canvass of the presidential votes in 2004 election could be the most appropriate response that the Majority of this Chamber could take regarding the manifestation that I have raised.

But still better, a *pro forma* approval of the Minority move for the replacement of Mr. Enrile as a member representing the Minority in the CA by Ms. Madrigal would put the issue to rest.

May I ask the Chamber to act on the matter now.

QUESTION OF PRIVILEGE OF SENATOR ENRILE

Rising to a question of personal and collective privilege, Senator Enrile spoke on the issue of his removal as member of the Commission on Appointments.

The full text of his statement follows:

I am quite happy that the distinguished Minority Leader has brought the matter before the Chamber for resolution, and I think that as a matter of privilege, I have the right to reply.

I rise on a matter of personal and collective privilege in order to clear myself of certain baseless charges leveled against me in my capacity as a member of the Commission on Appointments by a bloc in the so-called Minority in the Senate, which seeks to remove me from the Commission and replace me with Sen. Ma. Consuelo Madrigal alias "Jamby,", who is a member of that so-called Minority in this Chamber.

Briefly, the charges as I understand them, are:

First, that the so-called Minority in the Senate claims that I was made a member of the Commission because I belonged to that so-called Minority at the time I was elected to the Commission by the Senate.

Second, that because I have since dissociated myself from that so-called Minority, I can no longer represent it in the Commission.

Third, that I had taken a stance in the Commission and committed certain acts there that tended to favor the Administration.

Fourth, that I was, in the words of those who seek to remove me from the Commission, "lawyering" for and "railroading" the confirmation of DENR Secretary Mike Defensor which, according to some members of the so-called Minority, is adverse to their interest.

And finally, that the Majority in the Senate is protecting me. This was said in television interviews on the issue of my removal and replacement.

Because of this obvious malice, falsity and unfairness, allow me to deal with the last charge first.

Let me state formally and categorically for the Record that I have never solicited, by word or by deed, either the individual or collective help or protection, although if that was done, I would have expressed my appreciation of the Majority in the Senate, nor did the Majority or any of its members, with due respect to all concerned, offered to me, in whatever way, any form of assistance and/or protection.

If the Senate, as a whole, has not seen fit up to this moment to entertain the manifestation of the Minority Leader, it is simply because, in my humble view, the Senate has recognized the manifestation to be, on its face, lacking in merit and not proper for consideration in the light of the unequivocal provision of the Constitution and the current decisions of the Supreme Court on the matter.

And so, may I respectfully suggest to those who wish to remove me from the Commission on Appointments to refrain from further making the baseless accusation that the Majority in the Senate is helping and/or protecting me, first, because that is not true and, second, because it is unfair to the Majority, as it is to me.

Modesty aside, I was able to handle my problems alone all my life up to now, whether in peace or in war. My battles, both personal and political, have been difficult and arduous, but my humble circumstances have prepared me to face all these alone even at the cost of my life. The challenge to my membership in the Commission right now is nothing compared to the much more serious attacks on my person and the travails I encountered along the way in the past.

Having said that, I shall now proceed to deal point by point with the other charges against me.

Claim of the Pimentel bloc

The claim of the Pimentel bloc (consisting of himself, Sergio Osmeña III, Panfilo Lacson, and Ma. Consuelo Madrigal alias Jamby) that the membership in the Commission on Appointments from the Senate is based on the Majority and Minority groups in this Chamber is wrong and devoid of any legal merit.

Commission on Appointments

The Constitution says, "There shall be a Commission on Appointments consisting of the President of the Senate, as *ex officio* Chairman, twelve Senators and twelve Members of the House of Representatives, *elected by each House on the basis of proportional representation from the political parties* and parties or organizations registered under the party-list system represented *therein*." (Section 18 of Article VI).

Basis of membership in the Commission

The constitutional provision I have just quoted is very clear even to the law student: Membership in the Commission on Appointments is and I quote: "ON THE BASIS OF PROPORTIONAL REPRESENTATION FROM THE POLITICAL PARTIES" in the Senate and in the House of Representatives. The proportional representation from political parties referred to in the Constitution applies to all parties composing the Majority and the Minority in this House as well as in the House of Representatives.

The Constitution does not speak of the words "Majority" and "Minority" or "Administration" and "Opposition" senators or representatives as basis for determining and allocating membership in the Commission. The Constitution simply uses the words "proportional representation from POLITICAL PARTIES" for that purpose.

Tradition and precedents

Sen. Sergio Osmeña, when this matter was brought for the first time in this Chamber, made much of what he called tradition, precedent, and practice in the Senate to support his argument and the arguments probably of the Pimentel bloc that membership in the Commission had been determined and allocated in the past, without regard to political party affiliation and representation, on the basis of the relative numbers of senators constituting the Majority and Minority in this Chamber.

Although that might have been true, I maintain that the so-called tradition, precedent, or practice cannot stand when it is challenged, as it is now, in the face of a clear provision of the Constitution. Tradition, practice and precedent cannot alter the Constitution — not even with the unanimous consent, agreement, omission, or sufferance of the entire Senate or of the entire Congress for that matter. Otherwise,

such a deviation from, or practice against, the clear provision and intent of the Constitution would constitute an illegal, unmitigated, and unwarranted amendment of the Constitution, done contrary to, and with deliberate violation of, its Article XVII.

Not even Congress as a whole, and much less any of its two Houses of Congress can alter a punctuation, a word, a phrase, a sentence, or any part of the Constitution without observing the procedure and requirements provided for in Article XVII of the Constitution.

Supreme Court interprets

Nor is Congress or any of its two Houses, and much less a mere member or group of members thereof, who are not even trained in the law, except Senator Pimentel, is authorized to make a binding interpretation that will contravene the clear mandate of the Constitution. Only the Supreme Court, if at all, is invested with that power from the sovereign people of the country.

Election of membership by each House

In addition to the mandatory requirement of "proportional representation from political parties," it is also clear from the Constitution itself that members of the Commission must be "elected by each House" of Congress.

Without that operative election, no member of Congress, even though designated by his or her political party as a member of the Commission, can sit and participate in the official activities of the Commission simply by virtue of his or her party's nomination. To be able to do that, he or she must be elected in the Commission by the House to which he or she belongs.

Purpose of election

The required election, in my humble view, is not a mere formality. It was adopted to serve certain purposes. It was intended to shield the members of the Commission from unwarranted pressures from their party mates. It was also intended to protect the Commission from possible instability arising from frequent changes in its membership because of the maneuvers and machinations of disgruntled members of Congress, such as what is happening now.

My membership springs from my political parties

I do not owe my membership in the Commission to the so-called Minority in the Senate, neither do I owe it to Senators Aquilino Pimentel Jr., Panfilo Lacson, Sergio Osmeña III, and Ma. Consuelo Madrigal alias Jamby, individually and collectively.

I owe my membership in the Commission to my party, the *Pwersa ng Masang Pilipino* (PMP), of which I am the incumbent Chairman, and to the *Koalisyon ng Nagkakaisang Pilipino* (KNP), of which the PMP is a coalition member.

At the time of my election to the Commission and also at the time of its eventual organization, the PMP and the KNP were both existing and registered political parties per records of the Commission on Elections. I have here the certification of the Commission on Elections on everything that I am saying here. Until today, contrary to the claim of those who ache for my membership in the Commission, the PMP and the KNP are still registered and existing political parties per records of the Commission on Elections.

I have here with me the official and formal certification of the Commission on Elections to that effect, which, with your permission, I will read into the records of the Senate.

Osmeña and Lacson

Senator Sergio Osmeña III and Senator Panfilo Lacson were not, and never have been, members of the PMP and the KNP. In fact, Senator Panfilo Lacson ran for President of the Philippines in the May 2004 national elections against the candidate of the PMP and the KNP, Mr. Ronald Allan Poe, more popularly known as Fernando Poe Jr.

Senator Sergio Osmeña III, on the other hand, was never a member of, or in anyway identified with, the PMP and or the KNP. Though he now claims to be a member of PDP-LABAN, a political party which affiliated itself through a coalition with the KNP. I never saw his face nor his shadow during the entire 2004 campaign, nor in any meeting or gathering of the PMP and/or the KNP.

KNP candidate for the Senate

Aside from my being a candidate of the PMP for senator in the May 2004 national elections, I was also registered with the Commission on Elections as a candidate of KNP for senator in that same national elections, along with Boots Anson Roa, Amina Rasul, Aquilino Pimentel Jr., who now stands as Minority Floor Leader, Alfredo Lim, Jinggoy Estrada, Ma. Consuelo Madrigal alias Jamby, Ernesto Maceda, Didagen

Dilangalen, Francisco Tatad, Salvador Escudero, and Ernesto Herrera.

Again, as I said, I have here the official and formal certification of the Commission on Elections to that effect.

Proclaimed KNP senator

I was among the five KNP senatorial candidates that won a seat in the Senate in the last national elections in May 2004. The others were Jinggoy Estrada, Alfredo Lim, Maria Consuelo Madrigal alias Jamby and Aquilino Pimentel. All five of us were proclaimed KNP senators by the Commission on Elections. I have here the certification of the Comelec carrying our proclamation. If the distinguished Minority Floor Leader would care to read the resolution of the Comelec that proclaimed him to be a senator, he will find that he was proclaimed not as a PDP-Laban, he was proclaimed as a KNP, unless he has forgotten already. Aquilino Pimentel, Koalisyon ng Nagkakaisang Pilipino (KNP); Maria Consuelo Madrigal alias Jamby, Koalisyon ng Nagkakaisang Pilipino (KNP), Alfredo Lim, Koalisyon ng Nagkakaisang Pilipino (KNP), etc.

KNP senators in the Senate

When the 13th Congress opened its sessions in July 2004, there were seven KNPs in the Senate: Senators Edgardo Angara (LDP), Luisa "Loi" Ejercito Estrada (PMP), Jinggoy Ejercito Estrada (PMP), Alfredo Lim (KKK-LABAN), Ma. Consuelo Madrigal alias Jamby (PMP), Aquilino Pimentel, Jr. (PDP-LABAN), and Juan Ponce Enrile (PMP).

Osmeña and Lacson rode on KNP

On their own and primarily for their personal convenience and benefit, Sen. Sergio Osmeña III and Sen. Panfilo Lacson joined the seven (7) KNP senators. This grouping later on became known as the Minority in the Senate to distinguish the members thereof from the Majority composed of pro-administration senators.

Minority not a political party

This so-called Minority in the Senate is neither a political party nor a coalition of political parties. What are they? Maybe we should asked them. It has no articles of association, no political party platform, and no structural organization. This so-called Minority in the Senate is nothing but an ad-hoc collection of senators who are not pro-administration, and who did not vote for the incumbent Senate President.

Consequently, this so-called Minority in the Senate has neither the constitutional prerogative, nor the legal personality, nor the standing to question my membership in the Commission. It has no legal status — a non-entity — in so far as the issue at hand is concerned.

Osmeña and Lacson possesss no standing

Sen. Sergio Osmeña III and Senator Panfilo Lacson do not possess any right, power, prerogative, or personality to participate in any caucus, discussion, or, for that matter, any decision regarding my cessation or continuation as a member of the Commission. They are not my party mates. They are not members of the PMP and/or KNP. Both senators have no contribution, in anyway, to my election to the Senate. Unlike the PMP and the KNP, they had nothing to do with my becoming a member of the Commission on Appointments.

Ouster of Osmeña and Lacson

If anyone should be ousted from the Commission, surely it should be either Sergio Osmeña III or Panfilo Lacson. They cannot both be members of the Commission. They are in the Commission solely on the political strength of the KNP, not their political strength, solely on the political strength of the PNP, of which they are nothing but interlopers. They cannot both be in the Commission on the strength of their own individual political party affiliation.

Who do I represent in the Commission?

I do not represent in the Commission Sergio Osmeña III, Panfilo Lacson, Aquilino Pimentel, Jr. and his PDP-LABAN, or the so-called Minority in the Senate. I have no obligation to them to do so.

By virtue of the clear mandate of the Constitution, like other members of the Commission, I represent only the political parties to which I belong, the PMP and the KNP. This is the essence – if they do not understand it — and rationale of "proportional representation from political parties" mentioned in the Constitution.

I also represent the Senate in the Commission because I cannot be there and no one can be there without being elected to it by the Senate. Although its members are from the Senate and the House of Representatives, the Commission is nonetheless a distinct body. It is apart from the two Houses of Congress. Hence, no one, except maybe the President of the Senate, can be a member of that Commission without being elected to it by either Houses of Congress.

Interest of the country

Above all, I represent the interest of the country in the Commission. In the performance of my duties there, I am not obliged to obey the dictates of anyone. I am not under his jurisdiction in the Commission on Appointments. I am not bound to follow a judgment other than my own judgment regarding what is good for the country, and what is not.

In the discharge of my duties, I act according to my conscience and according to my own perception and assessment of what is in the best interest of the people. I am answerable only to them, not to the Pimentel bloc, not to the Minority in the Senate. I am answerable only to the Filipino people and to the political parties that caused me to be in the Commission.

Equally, in the exercise of my prerogatives, I owe no one any obligation to fight for the personal battles or interests of others who may have a grudge or a score to settle against any person or official under scrutiny by the Commission.

And I want to tell everyone including the Minority Floor Leader the members of his bloc and the Minority in this Chamber that I will not allow myself to be used as an instrument of vengeance against anyone, or to serve as a tool for the personal agenda of others.

The case of Mike Defensor

The nomination of DENR Secretary Mike Defensor has been pending for several months in the Commission on Appointments. His case was heard for the first time on May 17, 2005, in the afternoon, by a committee of the Commission chaired by Sen. Richard Gordon, and I am going to show and tell this Senate who is lying before the Senate.

When the hearing opened, there were only two oppositions in the agenda. The oppositors were present. When they were made to explain their opposition against Secretary Mike Defensor's confirmation, the oppositors expressed their decision to withdraw their oppositions.

Madrigal opposition

Thereafter, the secretariat of the Commission informed the Committee that a belated opposition against Secretary Defensor's confirmation was filed at 6:45 in the evening of the night before that hearing on May 17, 2005 by twenty-three oppositors, which included four bishops and Senator Madrigal. This belated opposition was filed through the office of Senator Madrigal.

Now, I would like to say if there is any falsehood about this narration of facts. I asked if the oppositors were present, and I was informed that they were not. I asked if any staff of Senator Madrigal was around, and someone responded affirmatively. I asked the person to find out if the lady senator cared to come down to the hearing. Afterwards, the Committee was informed that the lady senator, Senator Madrigal was not in her office.

Motion to admit opposition

I then made a motion to consider the documents embodying the opposition of the twenty-three oppositors as submitted and to be taken up during the Committee deliberation on the case of Secretary Defensor.

In the course of making my motion, I uttered the remark that oppositors to a nominee for confirmation should not be filing their oppositions only to arrogantly fail to appear during the hearing.

Lacson aside

Before my motion could be acted upon by the Committee, Senator Lacson (he is here, he can deny or confirm it, if he wants), without addressing the Chair, made an aside and in effect said, "a fellow senator should be allowed to be heard." The Committee took his aside as an objection to my motion.

Then a heated debate ensued between the Chair and another member of the Committee who was supporting my motion.

Motion withdrawn

To obviate further wrangling in the ongoing proceedings, I withdrew my motion. After that withdrawal, I was approached by members of the Majority in the Commission and they asked me to restore my motion. I refused to restore my motion.

Shortly after, I left for my Senate office on the 5th Floor of the Senate building to attend to a visitor who was waiting for me.

Mike Defensor endorsed for confirmation

When I reached the 2nd floor on my way back to the Committee hearing, I was told that the Committee hearing was already adjourned and that Secretary Defensor's confirmation was already endorsed favorably to the plenary of the

Commission on motion of Congressman Eduardo Veloso.

I was not there. I did not participate in the so-called railroading.

Caucus of the Commission

The next day, Wednesday, May 18, 2005, a caucus of the Commission, presided by the Senate President was held. Senator Madrigal appeared and was allowed to speak before the members of the Commission as a whole.

When Senator Madrigal spoke, instead of going directly to the point and narrate her opposition against Secretary Defensor's confirmation, she raised her voice loudly and insulted the members of the Committee for favorably endorsing the confirmation of Secretary Defensor to the Commission. She accused the Committee members of "railroading" the confirmation of Secretary Defensor and also said in an angry tone that she "resented being called arrogant" in a supposed "press release."

In fact, if I recall correctly the wordings of Senator Madrigal when she made the assertion that the Committee was railroading, she said to the effect that "I thought that railroad are made outside this Senate. They are made inside the Senate." In fact, that was a slur to the institution to which she belongs.

At that point, I raised a point of order as a must even if she was my co-member in the so-called Minority, although at the point, I was no longer there. I raised a point of order because the insult was not only directed to a specific member of the Committee, it was directed to the entire Committee and that point of order was sustained by the Chair.

And so Senator Madrigal proceeded to simply read her affidavit of opposition which was already a part of the record without adding or subtracting anything to or from that affidavit of opposition.

Osmeña's dilatory

Then Sen. Sergio Osmeña III argued that under the rules of the Commission, the twenty-three oppositors were entitled to a written notice and that he wanted to hear the bishops in person. He is here, he can either deny, disclaimed or, if he has the guts, affirm what I am saying. And he threatened to invoke Section 20 of the Rules. As a consequence, no plenary session of the Commission was held on that Wednesday, May 18, 2005.

Fabricated falsehood

From the facts narrated above, the assertion of the Pimentel bloc that I was lawyering for Secretary Mike Defensor, without verifying the true facts from the records, is an unmitigated and shameless fabricated falsehood, bereft of truth.

Such false machinations, done by people who are supposed to be "distinguished gentlemen," are unfit for those of the likes of the senators belonging to that bloc, who bask in the glory of being addressed with the honorific word "Honorable."

Minority leadership in the Commission

I have already argued well enough that the so-called Minority in the Senate does not possess any factual, constitutional, or legal basis to cause my removal from the Commission. The so-called Minority in the Senate is not a political party. It is nothing but an ad-hoc collection of non-administration senators representing different political parties.

Only the PMP and the KNP, the two political parties under whose banner I was elected to the Senate, have the right and the prerogative to remove me for cause from the Commission.

Senators Aquilino Q. Pimentel Jr., Sergio Osmeña III, Panfilo M. Lacson, and Ma. Consuelo Madrigal alias Jamby are not my principals. They are mere interlopers as far as my position in the Commission and I are concerned. Individually and collectively, they cannot interfere with my membership and my function in the Commission. They are no better than trespassers of my rights and privileges as a member of the Commission.

By the same token, my position as a Minority Leader in the Commission is a function of the minority group in the Commission which includes minority membership from the House of Representatives. The Minority in this Chamber has no jurisdiction, no say in my being a Minority Leader in the Commission. The so-called Minority has no jurisdiction, no authority, no power whatsoever over the Minority in the Commission on Appointments. The Commission is a distinct body from the Senate and the House of Representatives, if they do not know this yet, although its membership reflects the relative political strengths of the parties in each of the Houses of Congress.

My cessation or continuation, therefore, as a Minority Leader of the Commission can only

be decided by the minority members of the Commission, and not by the so-called Minority members in the Senate.

Judicial, not political, remedy is proper

The remedy of those who hunger for my position in the Commission is judicial and not political. If Senators Aquilino Pimentel Jr., Sergio Osmeña III, Panfilo Lacson, and Ma. Consuelo Madrigal alias Jamby indeed believe that they have a valid cause of action, either individually or together, I urge and challenge them to go to court and obtain judicial redress. Otherwise, they must stop misleading the public and causing disturbance to the proceedings of the Senate.

My role as an oppositionist

I was elected as an opposition senator. As such, in my maiden privilege speech at the beginning of this Thirteenth Congress, I articulated what I honestly believe is the role I am called upon to perform — that of a responsible fiscalizer who will scrutinize each piece of legislation brought before us here; to raise questions and issues involving the public good; to contribute my insights, viewpoints, experience and knowledge to the task of crafting laws; and, most importantly, to suggest solutions to the grave problems of the nation.

In my humble view, I have been true to this role. And while I decided to be independent from the leadership of the Minority Floor Leader, I categorically declared that I will remain in the Opposition and that I am not joining any pro-Administration party. I did not cease to be an oppositionist just because I refused to be under the control of Senator Pimentel. Surely, there is more to being an oppositionist than attending so-called "minority caucuses."

Opposition not by lip service but by deed

There has been much talk about who is the "real opposition" or who are the "real oppositionists" in the country today. Politicians can beat their chests, as some of us are wont to do, and proclaim that "they" are the real opposition. *Okay lamang iyon, sir. Okay lang iyon po. Okay lang iyon."* To me, on the other hand, it is not words nor lip service but deeds and actions that define who and what we are.

To this day, despite the fact that I fought hard for more meaningful Committee chairmanships for the members of the Minority of the Senate, I have refused to take on any chairmanship for myself. Sen. Luisa "Loi" Ejercito Estrada did likewise – she did not accept any committee because of self-respect. We insisted that if the Majority can select committees, the Minority should have the same right to do so – a right that was denied to us, but which was not insisted upon by the Minority Floor Leader.

Recently, I took the floor to challenge the leadership of the Senate to exact responsibility, especially from the Majority senators who have taken various committee chairmanships but have failed to act on the bills pending in their committees. I have repeatedly denounced the lethargy with which the committees have treated important bills, resulting in the Chamber's failure to act on these measures on the floor while the people grow weary and impatient for action.

I also took the floor to expose the highly questionable contract for the North Railway Project shortly after Senator Pimentel, the Minority Floor Leader, who joined President Arroyo in her trip to China, where this anomalous contract was sealed, reported on this as the highlight of the sojourn in China. Up to now, the Senate has not initiated the investigation of this anomaly by the Committee of the Whole, and the Minority Floor Leader did not take initiative to move for the investigation of this project that he denounced in the first place.

My Anti-Trust Bill and my proposed revision of the Electric Power Industry Reform Act (EPIRA) which both seek to urgently address the soaring costs of fuel, electricity and goods burdening our consumers remain unacted upon. Likewise, my proposal to double the personal tax exemptions granted to salaried employees in order to free a larger portion of their income for the basic needs of their families has not even been heard at the committee level.

If I sound like a broken record in urging my colleagues to buckle down to work, I do not apologize for it. For while some of us would rather stoke the fire of discontent, as if they have been through a revolution or a war, I know in my heart that the people demand action and solutions on our part.

The larger opposition

Outside of the Senate, I have actively involved myself with the United Opposition (UNO). I have given my full support to UNO without any pre-condition, unlike others who would want conditions to be imposed before

16

they enter the UNO, and despite the fact that some elected "opposition" members apparently do not give much importance to even attend our gatherings in the UNO. I am in the UNO because I share the vision of uniting opposition forces under a broad front and legitimately challenge administration policies, actions and measures that are inimical and injurious to our people's rights and interests.

In the latest battle against the proposed 12% VAT, I joined UNO and other opposition groups in the Anti-VAT Summit and other activities outside of this Hall to show my solidarity with them. Some who pretend to be oppositionists distanced themselves from these activities or were too busy to bother. I vigorously opposed the imposition of the VAT on the power sector, even as I was not supported by some of the members of the Minority in this Chamber who thought they had better ideas. I respected their opinion and never questioned their motives.

Responsibility to my party

The elected members of the opposition in a democracy are not expected at all times to take a uniform stand on every issue. We are not mere puppets of political groups. Our responsibility as elected officials, first and foremost, is to the public and the electorate. But as party members, we are likewise beholden to the avowed principles of the political party to which we belong. If anyone of us has been remiss in his obligations, the party must exact responsibility and accountability and assert its own discipline on its members and no one else can do that as far as I am concern.

I appreciate the fact that my partymates in the PMP, Senators Luisa "Loi" P. Ejercito Estrada and Jinggoy Ejercito Estrada, chose not to participate in the cabal which sought to oust me from the Commission on Appointments. As far as Pres. Joseph Ejercito Estrada - father of the Puwersa ng Masang Pilipino, is concerned, whatever the political twists and turns may bring, nothing will change my conviction that he was unconstitutionally deprived of the residency. As a consequence of this conviction, I was harshly criticized, maligned, demonized, arrested, jailed, falsely accused, and eventually targeted to deprive me of my votes in the elections of 2001. I have no regrets or rancor. I never keep hatred in my heart. If I did, I would probably have been what I am today. I take those things as aberrant events of political life.

Under detention for more than four years now, President Estrada cries for justice and a fair trial. Some say he should even be thankful for not being in a detention cell rather than his rest house in Tanay. To me, every day of his detention is a continuing injustice to a man who was illegally removed from the highest position of the land and charged on the basis of the self-serving claims of a self-confessed *jueteng* lord. To this day, the accuser struts around town with a phalanx of armed bodyguards, enjoying his vast, unexplained riches. It is strange that those who participated in President Estrada's downfall now courageously and arrogantly identify themselves with the "opposition." Mahiya naman kayo.

Malignant tumor

The Pimentel bloc has referred to me as a "cancer" that needs to be contained to arrest its spread. I am 81 years old. I have seen the best and the worst in this life. They do not need to waste their time and the Senate's time on me for I leave it to God and to history to judge if I have served this country well and I can compare my record with anyone in this hall and this country for that matter.

I ask them instead to excise the "malignant tumor" in the brains of some of us who claim to be leaders yet fail to see beyond self-interest, personal vengeance and political opportunism. This malignant tumor surely is far more life-threatening and dangerous to the health of this nation than the "cancer" they perceive Enrile to be.

QUESTION OF PRIVILEGE OF SENATOR OSMEÑA

Rising to a question of personal and collective privilege, Senator Osmeña responded to the statement of Senator Enrile, to wit:

I have been amused by the double-speak, the half-truths that have been coming out of the mouth of Senator Enrile this past few weeks ever since this brouhaha over the CA membership came about. He has mentioned several times to the media and in his speech today that Senator Osmeña and Senator Lacson, for that matter, have never been members of the PMP and KNP. And my response to that is, "Who cares?" Are the KNP and PMP the Minority in the Senate? Where in the rules does it say that the opposition party is the Minority? It does not matter to me since I have never been a member

of the PMP and KNP. What for? The record again says that he was never a member of an identified party and now he claims to be a member of PDP-Laban.

For goodness sake, he has a big staff. All he has to do is go to the Commission on Appointments and pull out my certificate of candidacy dated February 12, 2001 and it says, "Osmeña, Sergio dela Rama, nickname Serge, officially nominated by Partido Demokratiko Pilipino-Lakas ng Bayan." That is the formal name of PDP-Laban. And I formally joined PDP-Laban in late 2000. I was sworn into office upstairs by the then Senate President, Sen. Aquilino Q. Pimentel Jr. If he wants to, he can have photographs of it and I will autograph it myself. Who cares if he had not known me as a member of PDP-Laban. It is not important.

Now, if he cares to know since he says that I have never attended any meeting of the opposition – I guess, by opposition he means the KNP – he does not know that Fernando Poe Jr. talked to me in my house for three hours in late December, asked me for my support, and I said, I would; that I funded personally a P1-million survey conducted by SWS to determine the right issues that he could be identified with. Ask Mar Mangahas.

I helped in organizing the economic brain-trust of Fernando Poe Jr. and this we did in my house and in the house of Carmelo Santiago. Ask Carmelo Santiago; ask Toti Chikiamco; ask Dr. Raul Fabella; ask three or four others whose names escape me now; and we did come up with position papers.*

In March, he said I was nowhere in the elections. That is true. I offered but I was not asked to campaign so I did not campaign. In fact, I had to bring my wife to California for a medical check-up after her cancer surgery six months earlier.*

However, when I returned, Sen. Tito Sotto called me up and asked me if I could go to Cebu for the Cebu sortie of Ronnie Poe, and I did. I paid for my own chopper; I went to Toledo City for the rally; I had lunch there. I went to Talisay City, but I just begged off from the sortie in Cebu City because my brother, Mayor Tommy Osmeña, was a candidate of the other side and I could not stand on the same platform as his opponent who was Alvin Garcia, and Ronnie Poe understood that.

*As corrected by Senator Osmeña on June 8, 2005

I was also asked, I was cajoled to join the Minority panel on the canvassing. As a matter of fact, it was Senator Pimentel, Senator Angara, Senator Tito Sotto, then Sen. Tessie Oreta and myself, and then the alternate were Senator Loi Estrada, Congressman Jing Paras, and one or two others. I guess he deliberately omitted that.

Senator Enrile likes to argue but of both sides of his mouth. One, he likes to maintain that the Opposition is the Minority, not the other way around.

The Rules are very clear. There is nothing in the rules that ever mentions the word "Opposition." And why are they the Opposition? Do they mean to say that since I have not opposed President Arroyo since 2001, that does not make me opposition? Well, I do not really care what he thinks, so he can have his own definition.

That I have never been a member of the PMP of KNP? Who cares? I am still opposed to the corruption in this government. That I joined seven KNP senators for their convenience and benefit?

Mr. President, you yourself asked me to join the Majority. During the canvassing, you offered me choice committees, and I said, "No, I believe my duty is to continue fiscalizing, and I will fiscalize even if I am the only one left in the Senate."

While I appreciated your offer, I said I shall remain with the Minority in the Senate. And many others are witnesses to that. And then when the time comes, he now defines the Minority. This time properly. And he says, "The Minority is nothing but an *ad hoc* collection of senators who are not pro-administration."

Correct! That is the Minority. There is no opposition. It is Minority

Now, let me go to the incident in the Commission in Appointments.

Alam po ninyo, these all started because of the comments of Senator Enrile to the media, which were utterly gratuitous and unwarranted. In the meeting of the Commission, on a Tuesday, Senator Enrile was quoted—and I am quoting the *Malaya* report on 18th May, and the *Daily Tribune* also on 18th May. Let me read the dispositive portion:

> "Sen. Juan Ponce Enrile, a member of the Commision on Appointments, chided those who filed their opposition to the appointment of Defensor but

failed to appear in the hearing. Enrile said oppositors should not have demeaned the constitutional body by ignoring invitations to the hearing."

As if there were invitations issued to the hearing. If they only filed their opposition the night before, how could they have been issued invitations to the hearing? And that is why the bishops could not come *en masse* because they had not received the invitation.

And normally, in the CA, when one receives a notice, there is also a line there that says "To hear the opposition of one, two, three, four."

Now, there are 22 oppositors to Secretary Mike Defensor, and only two oppositors were named there and those were the ones who turned up on the hearing that Tuesday.

I will continue, and I will quote Senator Enrile:

"I do no think we should demean this body. Anybody, even a senator, has no right to show arrogance by not showing up after filing an opposition. We shall not allow that. I will not allow that."

I never heard such language utilized. First, *kasama natin sa Minority iyan. Kung ako iyon, tinanong ko muna,* "Jamby, *gusto mo bang mag-*question?" I would not have immediately insulted in public, "Arrogant *iyan, hindi sumisipot.*" *Hindi naman sinabi sa kanya na may* hearing, that her opposi-tion would be heard at that hearing. There is usually a three-day notice, and that is in the Rules.

Let us go now to the composition in the Senate. More half-truths, but let me just, for the record, inform this Body what the composition in the CA is.

In the first place, Senator Enrile is right. The composition in the CA, as mandated by the Constitution, is based on proportional party representation.

Now, let me see. In the first place, he keeps on citing the KNP, and I know why. Senator Angara had already said the KNP self-destructed after the elections. If it will suit Senator Enrile to say that the KNP exists, wonderful, the KNP exists.

As a matter of fact, the Records of the Senate show that Senator Enrile, Senator Madrigal, and Senator Lim have their party affiliation as KNP. There were only two PNP, Sen. Jinggoy Ejercito Estrada and Sen. Loi Ejercito Estrada, so that is three and two.

Now that he is left all alone in the KNP because Senator Lim and Senator Madrigal left the KNP, *nag-iisa na lamang siya, nagpapasama siya ngayon sa* PMP.

The second point, PDP-Laban has two members: Senator Nene Pimentel and myself, so we are enjoying the right for one seat as mandated by the Constitution.

If the PMP is one party, how can it enjoy two seats in the Commission on Appointments?

The decisions in the cases *Guingona* and *Tañada* mandate that there cannot be half a seat. So, therefore, if there are three of them, he is only allowed one seat, not two, not one-and-a-half, because there is no one-half.

Furthermore, many Members here are members of the CA although they are a party of one.

For example, Senator Angara. *Nag-iisa lamang iyan, miyembro ng LDP. Bakit siya nakakaupo?*

So, if we are going to ask the Senate to be fair and to abide by several decisions that have already been issued by the Supreme Court in the past, *Raul Daza vs. Chavit Singson, Coseteng vs. Neptali Gonzales*, either Senator Enrile or Sen. Loi Ejercito Estrada will have to give up one seat and Senator Angara is not entitled to any seat.

Since there is now a coalition of four in the Senate among Senator Nene Pimentel, Senator Fred Lim, Sen. Jamby Madrigal, and myself, then we are entitled to two seats. That is the mathematics of the whole thing.

So I am hopeful that we were able to clarify some of these things that were brought about by the speech of Senator Enrile, and I hope that his staff will be able to verify the computation as to the membership of the Minority according to proportional party representation in the Commission on Appointments.

REMARKS OF SENATOR ENRILE

Proceeding from the same line of argument, Senator Enrile did not believe in the logic of the position of Senator Osmeña that the membership in the CA should be based on the numbers of Majority and Minority. He wondered how the Minority that

have eight members could be entitled to five seats in the CA. He informed the Body that even if he is out of the Minority, he is still a member of the PMP and the KNP, the latter not having been dissolved and that, in fact, it is still registered as borne out by a Comelec certification.

Senator Osmeña clarified that Senator Angara, being the only member of the LDP, is not entitled to a seat in the Commission on Appointments. He said that the Minority would probably lose one of its five seats if the mathematical formula in the *Guingona vs. Gonzales* case where one-half seat is no seat at all were applied. He said that he was not arguing the issue of proportional party representation but in Senator Enrile's speech, it is clear that if the Body were to follow the constitutional mandate and the Supreme Court decision, the PDP-KKK coalition of Senators Lim, Madrigal, Pimentel and Osmeña is entitled to two seats, the PMP to one seat, and the LDP to none at all.

Further, Senator Osmeña pointed out that even the Majority are violating the constitutional mandate of proportional party representation as one Member who is independent was given a seat in the CA.

MOTION OF SENATOR PANGILINAN

Upon motion of Senator Pangilinan, there being no objection, the Chair referred the matter to the Committee on Rules.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 7:32 p.m.

RESUMPTION OF SESSION

At 7:32 p.m., the session was resumed.

ADJOURNMENT OF SESSION

Upon motion of Senator Pangilinan, there being no objection, the Chair declared the session adjourned until three o'clock in the afternoon of the following day.

It was 7:32 p.m.

I hereby certify to the correctness of the foregoing.

OSCAR G. YABES
Secretary of the Senate

Approved on June 8, 2005